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Chairman: Mr. Dhakal (Vice-Chairman) ..... (Nepal)

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In the absence of Mr. Bennouna (Morocco), Mr. Dhakal (Nepal), Vice-Chairman, took the Chair.

The meeting was called to order at 10.10 a.m.

Agenda item 146: International Criminal Court (A/59/356)

1. **Mr. Barriga** (Liechtenstein) outlined his Government's contribution to the progress of the International Criminal Court, and said that attention should henceforth focus on ways of providing increased support for the Court and ensuring that it had the resources, capacity and information necessary to end impunity for war crimes, crimes against humanity and genocide, when national authorities were unable or unwilling to do so. A robust budget and a fruitful working relationship with the United Nations were needed to that end. It was also vital that Member States should adopt implementing legislation, pay their assessed contributions fully and on time and ratify the Agreement on Privileges and Immunities. Furthermore, accession and ratification must once again gather pace if the ultimate goal of the universal application of the Rome Statute were to be attained.

2. The international community should always defend the Rome Statute when it was challenged, explain its principles if they were not fully understood and enlist all States, irrespective of whether they were Parties to the Statute, in the fight against impunity. With that in mind, it was to be hoped that the Assembly of States Parties would be held periodically in New York, as well as in The Hague, and that the Court would have a liaison office in New York. In the immediate future, practical support from the United Nations Secretariat, specialized agencies and programmes would be instrumental in enabling the Office of the Prosecutor to press ahead with its work. The International Criminal Court offered a rare opportunity to foster peace and security by combating impunity.

3. **Mr. Lauber** (Switzerland) said that the establishment of the International Criminal Court was a crucial stage in the international community's long struggle to promote justice and the rule of law, and the fact that the Court was fully operational was therefore a positive development. The campaign to achieve the universality of the Rome Statute must continue and close cooperation between the Court and the United Nations must be instituted. In that connection, it would be useful for representatives of the Court to attend any United Nations meetings or conferences which dealt with questions of interest to the Court. Whenever necessary, the Security Council must exercise the powers it was granted by the Rome Statute to bring to the attention of the Court situations where serious crimes had been committed, even if they had occurred in the territory of a non-Party State.

4. The Court would serve international peace and security by preventing the worst violations of human rights and international humanitarian law, by restoring the rule of law and by promoting reconciliation after conflicts. Yet the Rome Statute embodied the principle of complementarity, which meant that prime responsibility for prosecuting those responsible for genocide and crimes against humanity fell to national courts, with the Court intervening only when those courts were unwilling or unable to act. While every State must shoulder that responsibility, moves by the international community to strengthen local capacity would not come amiss. His Government would therefore continue to assist the fight against impunity by supporting the Court so as to ensure that it had the means to carry out its all-important mandate.

5. **Mr. Playle** (Australia) welcomed the considerable progress made by the International Criminal Court and commended the decision of the third session of the Assembly of States Parties to set up a contingency fund to cover unforeseen events or expenditure faced by the Court and the emphasis on robust and effective budgetary management. He also welcomed the focus on the critical role which justice and the rule of law played in effective peace-building. The year ahead would be decisive for the Court as it opened investigations into situations in two countries. Those inquiries should proceed expeditiously so that the Court could discharge the responsibilities entrusted to it by the States Parties and crimes which shocked the conscience of mankind could be investigated and their perpetrators brought to trial.

6. **Mr. van den Berg** (Netherlands), speaking on behalf of the European Union, the candidate countries Bulgaria, Croatia, Romania and Turkey, the stabilization and association process countries and potential candidate countries Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia and Montenegro and the EFTA countries Iceland and Liechtenstein, members of the European Economic Area, said that the International Criminal Court was the

most significant recent development in the long struggle to advance the cause of justice and the rule of law and that its existence was an invaluable safeguard against impunity and therefore a contribution to peace and security. Since the Court could assume jurisdiction only as a last resort when a State was unable or unwilling to do so, the Security Council's power to refer situations to the Court, even when countries were not States Parties to the Rome Statute, was most important. The announcement by the Prosecutor that the first criminal investigations were about to be opened indicated that the Court was fully operational and starting to combat impunity.

7. The European Union trusted that cooperation between the United Nations and the Court would be fruitful and set great store by the prospect of closer dialogue between the Court and the Assembly of States Parties. It also believed that it was important for the Court to remain in close contact with the international community in New York; hence it was pleased to note that the next elections for the judges would be held in that city.

8. The Court's support of victims' rights was a key element of the Rome Statute and its groundbreaking provisions on victims' compensation would foster national reconciliation among traumatized victims of the most severe crimes. The European Union therefore hoped that more States would pledge money to the Victims Trust Fund. It was also firmly committed to redoubling its endeavours to encourage ratification of the Rome Statute so that the Court would ultimately have universal jurisdiction. To that end, the European Union was ready to help States which might require assistance in that respect. It had relentlessly defended the integrity of the Rome Statute and would continue to do so.

9. **Mr. Makayat Safouesse** (Republic of the Congo) said that, in signing and ratifying the Rome Statute, his Government had been convinced that the establishment of the International Criminal Court constituted a turning point in the strengthening of international justice and the battle against impunity. Subscribing to the objectives of the Court would constitute a powerful defence against the recurrent threat of heinous crimes against peace and international security and of violence that might engulf the whole world.

10. The contents of the note by the Secretariat on the International Criminal Court (A/59/356) signified that the Court was operational, and the Relationship Agreement would enable the Court to take its place in the United Nations system. His Government would continue its efforts to harmonize his country's legislation with the provisions of the Rome Statute, but it looked forward to receiving technical assistance from the international community so that it could implement the Statute. It was on the point of signing the Agreement on Privileges and Immunities and was determined to join with other States in working to achieve the Court's aims.

11. **Mr. Suarte** (Brazil), speaking on behalf of the Rio Group, hailed the headway made by the International Criminal Court. The decisions of the Democratic Republic of the Congo and Uganda to refer situations to the Court were commendable and indicated that States had confidence in the independence and impartiality of the Court, which was the international community's key instrument for countering impunity. Recent contributions to the Victims Trust Fund should also be applauded. The Rio Group undertook to promote the integrity of the Rome Statute and to help the Court to fulfil its mandate effectively, because the Court's existence buttressed the legal foundations of the international community and the rule of law throughout the world. It also complemented the efforts of national courts to combat crimes which were an affront to humanity. For that reason, the Rio Group attached great importance to the deliberations of the Special Working Group on the Crime of Aggression.

12. Speaking as the representative of Brazil, he said that the recent open debate on justice and the rule of law had shown that the international community was firmly committed to strengthening international law and countering impunity. His delegation looked forward to contributing to that effort which would help enhance the legal effectiveness and legitimacy of the international community's response to the changing nature of conflicts throughout the world. In that context the Court could play an increasingly important role within a wider international institutional system. The universality and integrity of the Rome Statute had to be constantly borne in mind by all those who were helping to set up the Court. The Court's claim to universality was deeply rooted in the elaborate checks and balances built into the Statute. That regime provided the requisite safeguards against possible abuses and politically motivated misuse of the Court's

jurisdiction. His Government was committed to upholding the integrity of the Rome Statute as a whole and the consolidation of the rule of law all over the world.

13. **Mr. Mukongo Ngay** (Democratic Republic of the Congo) said that the massive violations of human rights and humanitarian international law that had occurred during five years of occupation of the eastern portion of the Democratic Republic of the Congo and the persisting aftermath of disorder and insecurity demonstrated that the re-establishment of the rule of law was one of the most significant challenges that his country faced in order to be able to halt the cycle of violence, put an end to impunity, address the underlying causes of the conflict and create a truly democratic society. True reconciliation in the Great Lakes region of Africa required that the crimes committed should be brought to light, responsibility should be assigned and the victims should be compensated.

14. The Democratic Republic of the Congo had therefore welcomed the decision of the Prosecutor of the International Criminal Court to open an investigation, the Court's first, into the serious crimes committed in Ituri since the Rome Statute had come into force. His Government had formally referred the situation in the entire national territory since 1 July 2002 to the Prosecutor to determine whether one or more specific persons should be charged with the commission of crimes within the jurisdiction of the Court. The Prosecutor had found that there was a reasonable basis to proceed with the investigation of some 5,000 to 8,000 murders and other crimes. To facilitate the Prosecutor's task, on 6 October 2004 his Government had signed a cooperation agreement with the Court to ensure protection for the investigators, guarantee them easy access to the records and provide them with means of communication in all parts of the country. As a further step to ensure that the Court could act with independence, confidence and security in the country, on 12 October 2004 the Government had signed an interim protocol of agreement on the immunities and privileges of the Court, to cover the period until the process of acceding to the Agreement on the Privileges and Immunities of the International Criminal Court could be completed.

15. The Prosecutor's announcement had given rise to excitement in the Democratic Republic of the Congo, worry among the perpetrators, satisfaction among the victims and reassurance among the entire population traumatized by conflict, since it was felt that the Court's action would discourage the commission of new atrocities. There was keen interest among the victims in the possibility that the Court could order reparations. Given the high expectations of the Congolese people, an awareness-raising campaign would be necessary to inform the public about the basic rules of the Court, so that victims would have a realistic idea of what claims they could justly bring and what rights they had to participate in the proceedings.

16. Since the Court operated on the basis of the principle of complementarity and could not take the place of the national system of justice, a reform of the judiciary was under way and deserved the support of the international community. The obstacles were formidable, particularly in view of the increase in crime, a common phenomenon in the transition from conflict to new democratic structures, and it was to be feared that without help the criminal justice system would be unable to cope with the many problems of international scope, such as organized crime, money-laundering, illicit arms trafficking and the illegal exploitation of the country's natural resources. The Government was pleased with the results of a programme launched with the cooperation of the European Commission and the Government of France to restore a criminal justice system in Bunia in the eastern part of the country and would urge donors to help to extend the programme to other parts of the country. Convinced that technical and financial assistance was essential for the establishment of the rule of law in the Democratic Republic of the Congo, his delegation appealed to all peace-loving nations to assist the country in strengthening its system of justice, fighting impunity and restoring peace to the Central African subregion.

17. The Democratic Republic of the Congo reaffirmed its commitment to the Court and urged full respect for the integrity of its Statute. It welcomed the accession of Burundi, Guyana and Liberia as further steps towards universality and hailed the signing of the Relationship Agreement between the Court and the United Nations as evidence of their determination to make common cause against impunity.

18. **Mr. Løvald** (Norway) said that his Government wished to commend the host country, the Netherlands, for providing outstanding support to the International Criminal Court during its transition from the setting-up

phase to the commencement of prosecutorial and judicial functions. The announcement by the Prosecutor that there was a reasonable basis to open investigations into crimes allegedly committed in the Democratic Republic of the Congo and in northern Uganda showed that the Court had become fully operational. It was significant that the first two situations dealt with by the Court stemmed from referrals by the Governments directly concerned. The commencement of operations had added urgency to the need for States to sign and ratify the Agreement on the Privileges and Immunities of the International Criminal Court and to honour their financial commitments. Norway welcomed the recent signing of the Relationship Agreement between the United Nations and the International Criminal Court, which would provide the basis for a continuing relationship and information-sharing between the two organizations while respecting their autonomy and confidentiality.

19. The acceptance of the Rome Statute by more than half of the States Members of the United Nations in only six years was a remarkable achievement, but the ultimate goal remained universality. While calling on those States that had not yet done so to consider acceding to or ratifying the Rome Statute, Norway would continue to promote dialogue on issues concerning the fight against impunity for the worst international crimes even with States that had shown a preference for addressing those issues solely within the framework of their own national systems. Its approach was guided by the fullest respect for the integrity of the Statute and the wish to demonstrate over time that the Court was an independent, impartial and objective institution and served the national interest of States committed to the rule of law. His delegation was pleased that in June 2004 the Security Council had not renewed the request for a resolution granting immunity from the jurisdiction of the Court to United Nations peacekeepers from a contributing State which was not a party to the Rome Statute.

20. **Mr. Kanu** (Sierra Leone) said that the horrendous crimes committed in his country demonstrated that absence of the rule of law created an atmosphere in which the commission of crimes under international law was not only possible, but could even flourish. The rule of law was therefore an essential ingredient of justice and accountability and the International Criminal Court was the sine qua non for reinforcing the fundamental principle of individual criminal responsibility for crimes under international law and for bringing alleged war criminals to justice.

21. Despite the strides taken towards making the Court a functioning institution, much work still needed to be done to establish a fully effective international criminal justice system with the Court at the helm. Even universal ratification of the Rome Statute would not be enough; the Statute had to be incorporated in domestic law through implementing legislation, especially in countries with a dualist legal system. His Government was thinking of organizing a consultative conference to enable civil society, members of parliament, lawyers and judges to provide input into the implementation process.

22. The Assembly of States Parties had tremendous responsibilities to the Court and, by extension, to the new international criminal justice system. It should therefore develop mechanisms and expertise for fulfilling its mandate effectively. One possible means of achieving that goal might be to restructure meetings of the Assembly of States Parties with a view to maximizing participation, efficiency and oversight of the Court. For that reason, his delegation endorsed the recommendation that the Assembly of States Parties should establish a number of subsidiary bodies which would also meet outside regular sessions of that Assembly. Furthermore, his Government was strongly in favour of the Court establishing a New York liaison office, since many developing countries had no representatives in The Hague and it was important for the Court to have a close relationship with the United Nations. Cooperation between the two bodies would clearly be fostered by the Relationship Agreement, which would, in addition, give the Court access to the vital support of the United Nations.

23. A number of non-governmental organizations had made an invaluable contribution to the establishment of a fair, transparent and credible international criminal justice system and had facilitated the participation of many delegations from developing countries in the third session of the Assembly of States Parties. His own Government had an unfettered commitment to democracy, the rule of law and the independence of the Court and it would work tirelessly to ensure the Court's effective operation.

24. **Mr. Mwandembwa** (United Republic of Tanzania) said that it was highly significant that the Assembly of States Parties had been able to hold its

third session in The Hague, at the very seat of the Court. His delegation urged all States parties to renew their efforts to assist the Court in the commencement of its operations, including by paying their contributions in full and on time. The commencement of operations would encourage undecided States to become parties and lead to universal acceptance of the Court. His delegation wished to commend the Democratic Republic of the Congo and the Republic of Uganda for referring situations to the Prosecutor, and the Prosecutor for agreeing to take the initiative in investigating events in those countries. As a close neighbour, the United Republic of Tanzania pledged full cooperation with the Court in its efforts. His Government had already signed the Agreement on the Privileges and Immunities of the International Criminal Court, and the ratification process was under way. The Agreement was of the utmost importance, since the Court did not enjoy the privileges and immunities of the United Nations. The Tanzanian Ministry of Justice was also considering the best way to address the important question of implementing legislation. His delegation wished to thank all those involved in setting up and contributing to the trust fund for the participation of the least developed countries in the activities of the Assembly of States Parties.

25. **Mr. Qi** Dahai (China) said that China had long supported the establishment of an impartial, independent, effective and universal international criminal court and had attended the third session of the Assembly of States Parties as an observer. China commended the intense preparatory work done by the judges, prosecutors and all other staff to ready the Court to begin operations and hoped that the spirit of coordination and cooperation that had prevailed would set the tone for the Court's future functioning. The Office of the Prosecutor had opened two investigations, in the Democratic Republic of the Congo and northern Uganda, and was conducting an in-depth analysis of six situations. The stated policy of the Office of the Prosecutor was to take a positive approach to cooperation and to the principle of complementarity and encourage State jurisdiction over international crimes in order to enable the Court to devote its energy to the most serious crimes. To implement the policy, the Office of the Prosecutor had established a Jurisdiction, Complementarity and Cooperation Division. His delegation hoped that the Prosecutor would maintain that pragmatic spirit, so that the principle of complementarity would form a genuine basis for the functioning of the Court. The Court had been given the task of fulfilling mankind's aspiration for justice, a daunting challenge, and it should devote the bulk of its limited resources to the punishment of the most serious international crimes. His delegation hoped that the Court would succeed in winning broad international trust and support through impartial and effective work.

26. **Mr. Rostow** (United States of America) said that United States opposition to the International Criminal Court was well-known. Its position was based on strong bipartisan agreement, reflected in the American Serviceman's Protection Act. United States concerns related to jurisdiction, due process, accountability, the relationship between the Court and the United Nations and the potential politicization of the Court.

27. With respect to jurisdiction and due process, the United States position was that citizens of States not parties to the Rome Statute should not be subject to the jurisdiction of the Court, a position consistent with the international law principle that a State could not be bound without its consent. The United States maintained that the application of its criminal justice system was not subject to review. If a United States soldier was prosecuted in the United States for war crimes, no international court should have the power to review the decision; if a United States prosecutor should decide not to bring a case, that decision should not be subject to review. The principle of multiple jeopardy was at stake.

28. The United States also questioned whether the Court, as structured, would truly be accountable to the Assembly of States Parties or indeed to any body. It was also troubled by the relationship between the Court and the international system governed by the Charter of the United Nations, which assigned to the Security Council the responsibility for determining whether aggression had taken place. Lastly, his delegation wished to thank those who had supported its position, reflected in General Assembly resolution 58/318, that the United Nations should only provide services to the Court on a strictly reimbursable basis.

29. **Ms. Ramos Rodríguez** (Cuba) said that her country had supported and would continue to support the establishment of an international criminal court that was impartial, non-selective, effective, fair and complementary to national systems of justice, a court that was truly independent and not subordinate to

political interests that might subvert it. However, the International Criminal Court as constituted was heavily subordinate to the decisions of the Security Council and hence hostage to the threat of a veto by one of the Council's permanent members, with the result that States not parties to the Rome Statute could exercise control over the work of the Court, undermining assurances that the Court would not act in a selective, politicized and discriminatory manner.

30. Cuba was no enemy of the Court, but followed the sessions of the Assembly of States parties with interest as an observer. It recognized that the Rome Statute was of great importance to international law. However, early hopes that the crime of aggression could be defined had not yet been fulfilled. It was a hopeful sign that the Special Working Group on the Crime of Aggression had been able to meet informally in June 2004 at Princeton University. Unfortunately, in yet another example of the limitations that a non-State party could impose on matters related to the Court, her delegation had been prevented by the United States authorities from attending the Working Group, in clear violation of the Headquarters Agreement and the rules of diplomatic law. Apparently, the host country chose to consider that the International Criminal Court had nothing to do with the United Nations. Cuba, a small country constantly victimized by the world's largest Power, was naturally reluctant to accede to the Rome Statute without a clear definition of the crime of aggression.

31. **Mr. Kuzmenkov** (Russian Federation), after noting with satisfaction the growing number of States Parties to the Rome Statute, said that the success of the International Criminal Court would depend largely on whether it acted objectively and without political bias, in accordance with the Statute and international law. His delegation welcomed the conclusion of the Relationship Agreement between the Court and the United Nations. Cooperation between the two bodies would serve as a symbol of the international community's determination to do away with impunity and promote the rule of law.

32. The Russian Federation was in the course of aligning its domestic legislation with the provisions of the Rome Statute. Once that process was complete, and once the first results of the Court's work were known, ratification would follow.

33. The widest possible consultations should be held on the question of the definition of the crime of aggression, to include both States that had ratified the Statute and those that had not. At the same time, there must be full respect for the prerogatives of the Security Council under the Charter of the United Nations on issues relating to the maintenance of international peace and security. Indeed, the Rome Statute should contain an explicit reference to the role of the Security Council in establishing the fact that an act of aggression had been committed before the Court obtained jurisdiction in such a case.

34. **Mr. Kupchyshyn** (Ukraine) said that the Court was now a reality as a major building block of the international security system. The first sessions of the Assembly of States Parties had been a momentous event in the process of establishing the Court and ensuring its ability to fulfil its mandate. In that connection, his delegation welcomed the entry into force of the Agreement on the Privileges and Immunities of the Court and the Relationship Agreement between the Court and the United Nations, as well as the establishment of the permanent secretariat of the Assembly of States Parties.

35. The system of international criminal justice based on the Rome Statute would be incomplete without the definition of the crime of aggression, including the elements of the crime, and the jurisdiction of the Court in that regard. Defining the crime of aggression should remain a core issue for the Assembly of States Parties.

36. All States must cooperate with the Office of the Prosecutor and provide it with all necessary assistance. For its part, the Court must conduct efficient, transparent and fair investigations and prosecutions, and seek equitable geographical representation and gender balance in the recruitment of staff.

37. Ukraine remained committed to the Court and was confident that the international community would demonstrate the political will further to develop such an independent and effective international judicial institution.

38. **Mr. Paolillo** (Uruguay) noted that there had been a number of auspicious developments concerning the Court in recent months, including the adoption of a series of important resolutions by the nearly 100 States Parties to the Rome Statute. The President of the Assembly of States Parties had been elected by one such resolution.

39. Uruguay urged those States that had begun the constitutional processes necessary for the ratification of the Rome Statute to complete them as quickly as possible. The Court's birth and first steps had taken place in a turbulent environment, and it now needed the strongest support of the international community. The best way to show such support was for States that had not yet done so to deposit their instruments of ratification.

40. The referral of cases by the Democratic Republic of the Congo and Uganda, respectively, was an eloquent expression by those States of their confidence in the Court. Their decisions would have far-reaching effects: the opening of the investigations in those cases would send a clear message to all States that a new era in the history of international justice had begun. The possibility of impunity for perpetrators of the crimes defined by the Rome Statute had been reduced. That idea had already taken root, even in those sectors originally most opposed to the Court, as evidenced by the non-renewal by the Security Council of resolution 1487 (2003), a resolution which Uruguay had held to be inappropriate, discriminatory, unnecessary and in violation of the Charter of the United Nations and international law.

41. A draft law under consideration in the Uruguayan Parliament would guarantee the incorporation of the Rome Statute into Uruguay's domestic legislation. The law included not only the provisions of the Statute but also the two additional instruments adopted by the Assembly of States Parties in September 2002. It assigned primary responsibility for the prosecution and punishment of all acts defined as crimes in articles 6 to 8 of the Statute to the national courts and guaranteed the application of the principle of complementarity. It also dealt in detail with all aspects of cooperation with the Court, including referrals, detention procedures and the surrender of persons to the Court.

42. **Mr. Tajima** (Japan) noted that the Court would begin investigating events in the Democratic Republic of the Congo and Uganda. However, because of the principle of complementarity set out in the Rome Statute, the Court's activities should not be evaluated solely on the number of cases assigned to it.

43. Although Japan had yet to accede to the Rome Statute, it had participated actively in all meetings related to the Court, including discussions on the budget. Japan attached great importance to effective and responsible financial management, so that the financial responsibilities of the States Parties would not become too burdensome. Budgetary increases should be subject to authorization by the States parties, but while the latter must be able to exercise control in such matters, the independence of the Court must be respected.

44. The Court must conduct its activities in a transparent manner, so as to dispel by its own actions any of the concerns or scepticism directed at it, often mistakenly. Given the limited financial and human resources of the Court, States should strictly refrain from resorting to it in search of convenient solutions to situations that were their own responsibility. However, the possibility that, in the future, one party to a conflict might seek to use the Court to strike at an adversary could not be ruled out, and the Court must therefore take steps to ensure the impartiality of its investigations.

45. **Mr. Stagno Ugarte** (Costa Rica) said that the establishment of the Court was one of the greatest successes achieved by the international community in recent years. In that connection, Costa Rica welcomed the recent ratification of the Rome Statute by Burundi, Guyana and Liberia.

46. The Court was a powerful tool in the fight against impunity and future commission of atrocities, war crimes and crimes against humanity. The Prosecutor was known throughout the world for his courage and legal and political realism. His blueprint for the Court would ensure that it would not only render justice but also contribute to peace and reconciliation following armed conflicts. The Court had been further strengthened by the recent election of a second Deputy Prosecutor. Costa Rica hoped it would be further strengthened in coming months, when the cases concerning the Democratic Republic of the Congo and Uganda were taken up. His country particularly appreciated the willingness of those States to submit their domestic situations to the Court and the good faith demonstrated by such an act.

47. Costa Rica was confident that in the future the Court would work ever more closely with the Security Council in the promotion of international peace and security. The Court's role in discouraging the commission of atrocities and war crimes would contribute greatly to the Council's work in promoting respect for the rule of law. Costa Rica called upon all

States to work together to strengthen the Court, in keeping with the Secretary-General's recent appeal for the full support of the international community in that regard.

48. **Mr. Much** (Germany) informed the Committee of the existence of the informal Group of Friends of the International Criminal Court, which was composed of approximately 110 States, including the 97 States Parties to the Rome Statute. It functioned to uphold and intensify political commitment to the Court, in New York, coordinating political support, conducting information exchanges and working to raise awareness of the Rome Statute and its relevance to the work of the United Nations. He thanked non-governmental organizations, in particular the Coalition for the International Criminal Court, for their efforts in promoting the Court.

49. All regions of the world were represented in the Group, as illustrated by the geographic distribution of its coordinators for specific issues: Brazil, Canada, Jordan, Mexico, New Zealand, the Republic of Korea, Romania and Uruguay. Among the members were States in conflict or post-conflict situations, attesting to their perception of the Court as being important to the establishment of sustainable peace.

50. Some delegations had argued that the Court was politically dangerous or legally flawed. The important fact remained that 110 countries worked together with civil society to promote the Court and would continue to do so. He indicated that Germany was coordinator of the informal Group.

51. **Mr. Grey-Johnson** (The Gambia) said that the Court had made great progress, and his delegation was very pleased that all the institutional arrangements were fully operational. The cases referred to the Court by the Democratic Republic of the Congo and Uganda, the constitution of the pre-trial chambers and the opening of the investigations in those cases marked a victory for the Court and an affirmation of confidence in it. All who believed in the pursuit of justice and the rule of law should be energized by that fact alone. Such confidence was increasing at an impressive pace, but it was not yet time to become complacent. Universality remained the final goal, and all delegations should work together to that end.

52. His delegation welcomed the signing of the Relationship Agreement between the Court and the United Nations. The two organizations needed each other's support in their shared purpose of maintaining international justice and the rule of law. The Security Council and the Court must strengthen their ties as soon as possible and work together constructively.

53. Progress had not been achieved by accident, but through commitment, dedication and unflinching support for the Court and its mandate. The future belonged to those who were determined to confront impunity, not to the Court's detractors, and the Gambia would do everything it could to advance the Court's interests.

54. **Ms. Ramoutar** (Trinidad and Tobago), speaking on behalf of the States members of the Caribbean Community (CARICOM), welcomed the increase in the number of States parties to the Rome Statute including the recent ratification by Guyana, a CARICOM member State. She urged States that had not yet done so to ratify or accede to the Statute, to adopt the necessary implementing legislation and to ratify and implement the Agreement on the Privileges and Immunities of the International Criminal Court, which would ensure that the latter was in a position to conduct its work properly.

55. The recent referral of two different situations to the Prosecutor by two States was an indication of the trust that States placed in the Court. The Court would, however, need to be able to rely on the international community's cooperation in the conduct of investigations, the taking of evidence, the service and execution of warrants and access to prison facilities. Equally, it must be able to count on the political support of States.

56. The signature of the Relationship Agreement between the Secretary-General and the President of the Court was of crucial importance for the international community. The Court and the Security Council could develop a similar relationship, which would ultimately benefit the innocent victims of conflict.

57. The Rome Statute was the first international instrument to confer on victims of genocide, war crimes and crimes against humanity the right of participation in and application to a trust fund for reparations. The CARICOM States welcomed the establishment of the secretariat of the Trust Fund for Victims, which would assist the Board of Directors of the Fund in their important task, and urged States to participate in the work that remained to be done. In that context, she informed the Committee that her

Government had recently agreed to contribute US$ 50,000 to the Fund, as well as US$ 10,000 to the trust fund for the participation of least developed countries in the work of the Assembly of States Parties.

58. Lastly, the CARICOM countries urged States participating in the Special Working Group on the Crime of Aggression to demonstrate the political will to overcome the difficulties standing in the way of consensus. It was important to have a text ready for adoption by the Review Conference in 2009 and, though that date seemed distant, the Assembly was likely to meet only once a year on substantive issues.

59. **Mr. Adsett** (Canada) said that his delegation was a staunch supporter of the International Criminal Court, which represented the world's best hope for combating impunity. The significant progress made over the past year was therefore welcome. The two referrals to the Court — by Uganda in December 2003 and the Democratic Republic of the Congo in March 2004 — bore eloquent witness to the confidence of States parties in the Court, which had already shown that it was not politicized but was rather a conscientious and responsible judicial body. The recently concluded Relationship Agreement between the Court and the United Nations was extremely significant in that context. The United Nations should take every opportunity to support the Court's crucially important work. When an appropriate situation arose, the Security Council should exercise its authority under the Rome Statute to refer situations to the Court. Such cooperation would ensure that the world's worst criminals were brought to justice and their victims protected. His delegation urged all States to help strengthen the Court.

60. **Mr. Hahn** Myung-jae (Republic of Korea) said that, since becoming a party to the Rome Statute in February 2003, his Government had been actively supportive of the International Criminal Court. It was currently enacting the implementing legislation for the Rome Statute and a judge from the Republic of Korea was serving in the Appeals Division. The Government had also signed the Agreement on the Privileges and Immunities of the Court.

61. His delegation had high hopes for the Court's investigation into the situations in Uganda and the Democratic Republic of the Congo, on the basis of referrals from those States themselves. Such progress would not have been possible unless the international community had had confidence in the Court.

62. His delegation welcomed the recent signing of the Relationship Agreement between the United Nations and the Court and commended the large number of States that had ratified the Rome Statute. An outreach programme for States that had not yet ratified the Statute should be conducted in order that the Court might achieve the goal of universality. In that context, his Government had held a special round table on international humanitarian law in 2003, with special emphasis on the role of international criminal courts. Such regional gatherings could contribute to enhancing States' awareness of the Court's importance.

63. **Mr. Maqungo** (South Africa) said that the International Criminal Court was very much in need of continued commitment from the international community, which must ensure that the Court had the resources needed to carry out successful investigations and prosecutions. States parties to the Rome Statute must meet their assessed contributions fully and on time. The international community should also make voluntary contributions to the Court and to the Trust Fund for Victims.

64. His delegation welcomed the Relationship Agreement between the Court and the United Nations, since a close working relationship between the two was essential. In that context, his delegation urged the Security Council to make use of the authority granted to it by the Rome Statute to make referrals to the Court, where appropriate. The number of ratifications of the Rome Statute was encouraging, but he urged States that had not yet done so to ratify the Statute.

65. **Ms. McIver** (New Zealand) said that the first years in the life of the International Criminal Court were crucial in ensuring that it fulfilled its potential. There had been important developments over the past year, including the Court's first two formal investigations and the conclusion of the Relationship Agreement between the United Nations and the Court. Mutual respect for the respective roles of the Court and the Security Council was also important and her delegation therefore welcomed the Security Council's decision not to renew its resolution 1487 (2003), which was inconsistent with the terms and purpose of article 16 of the Rome Statute. The Security Council should cooperate fully with the Court. National courts should, of course, remain the first line of prosecution; but in

some instances the nature or gravity of the crimes, the political situation in question or the capacities of the national system concerned would make it necessary to rely on an international process. In such situations, the Security Council should recognize the role of the Court and refer situations to it, if the circumstances so required.

66. To be fully effective, the Court should have the greatest possible geographical reach. Her delegation therefore welcomed recent ratifications of the Rome Statute and urged other States to become parties. The effective functioning of the Court depended, however, not just on ratification but on full implementation of the Rome Statute and of the Agreement on the Privileges and Immunities of the International Criminal Court, which New Zealand had ratified earlier in the year.

67. The Rome Statute contained a comprehensive range of checks and balances to prevent abuse. While her delegation understood the sincerity of the few States that had reservations about the Court, it was confident that the Court's operations would assuage their concerns. It was to be hoped that all States would cooperate with the Court.

68. **Ms. Katungye** (Uganda) said that the number of ratifications of the Rome Statute, which had reached nearly 100, were a confirmation of the Court's relevance to a world that sought to end impunity and to increase respect for international law. Her delegation considered particularly significant the signing of the Relationship Agreement between the Court and the United Nations; the adoption at the third session of the Assembly of States Parties of a resolution on the procedure for the nomination and election of judges; and the generous contributions by a number of countries to the Trust Fund for Victims.

69. Her delegation welcomed the fact that the Court would pronounce on the cases of the Democratic Republic of the Congo and northern Uganda, where the gruesome massacre of innocent civilians by the self-styled Lord's Resistance Army continued. Entire villages had been wantonly laid waste and their inhabitants hunted down, killed, raped or grievously maimed. It was therefore very encouraging that investigative teams had been sent to assess the situation in readiness for pre-trial proceedings. Her delegation trusted that reconciliation could ultimately be achieved and at the same time that others would learn that the international community would no longer tolerate impunity. Her Government, which had already pledged and demonstrated its support for the Court, looked forward to the bringing to justice of all those bearing the greatest responsibility.

70. Her Government was making every effort to ensure that the implementing legislation was enacted quickly. Since the ratification procedure for the Agreement on the Privileges and Immunities of the International Criminal Court was currently in the process of ratification, it had been decided that the implementing legislation should cover both the Rome Statute and the Agreement.

71. The Uganda Human Rights Commission, which was constitutionally mandated to monitor the Government's compliance with its international human rights treaty obligations, had recently organized a consultative meeting to seek the views of the public on the impact of the Court's investigations of the war in Uganda. It was thus hoped that the Court proceedings would link up with local efforts to bring healing to the people of northern Uganda and, indeed, the whole country.

72. **Mr. Awanbor** (Nigeria) said that the recently concluded Relationship Agreement between the United Nations and the International Criminal Court marked a new phase of mutually beneficial cooperation between the two bodies. His delegation commended the Court as a global judicial institution that would fight impunity and ensure respect for international humanitarian law. The judges and principal officers of the Court, with their impeccable records, professionalism and competence, would ensure that the Court would be independent and impartial. The large number of States parties to the Rome Statute was encouraging, in that it was indicative of the international community's growing confidence in the Court's ability to combat impunity, genocide, war crimes and other crimes against humanity.

73. Since the Court was still a relatively young institution, his delegation believed that the Assembly of States Parties should hold its meetings alternately in The Hague and New York, on a yearly basis, in line with the provisions of article 112 of the Rome Statute. Such an arrangement would enhance the Court's political visibility in New York, where there was already global representation, and would encourage the participation of many more developing countries,

particularly African States that had no adequate diplomatic representation in The Hague.

74. His delegation believed that the relationship between the Court and the ad hoc international criminal tribunals was complementary. It therefore expected the Court to follow the precedents already set by the three ad hoc tribunals. Lastly, his delegation called on States that had not yet done so to become parties to the Statute, since only universal adherence would engender the desired confidence in the Statute.

75. **Mr. Paclisanu** (International Committee of the Red Cross (ICRC)) said that the essential dignity of human beings was often among the first casualties of war and other forms of violence, despite the near universal support for the Geneva Conventions of 1949. An effective system to deal with war crimes was therefore fundamental; impunity could, indeed, nurture the cycle of retribution and revenge. The establishment of the International Criminal Court raised the hope that crimes of the utmost brutality would no longer go unpunished and that its work would have a deterrent effect. Moreover, with 97 States already parties to the Rome Statute, it was to be hoped that the Court would eventually become truly universal.

76. The Court's capacity to fulfil its task would depend largely on the level of support received from States. It was therefore crucial that ratification of and accession to the Statute should be accompanied by the adoption of adequate implementing measures. At the same time, since the Statute was founded on the principle of complementarity, States must assume their primary responsibility to repress crimes falling within the Court's jurisdiction in their domestic legal systems. Over the years, States sometimes became party to a variety of international instruments but failed to ensure that their national legislation provided for the prosecution of violations of such instruments. ICRC encouraged States to conform to their obligations arising from the Rome Statute and any other international humanitarian law instruments to which they were parties. Through its Advisory Service on International Humanitarian Law, ICRC stood ready to provide concerned States with legal advice and technical support in that regard.

Agenda item 147: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*) (A/59/189)

77. **Mr. Mikulka** (Secretary of the Committee), speaking as the Director of the Codification Division, and responding to the request by the representative of Costa Rica for an update on the report of the Secretary-General on the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* (A/59/189), said that no update was needed on the information on the *Repertoire* contained in the Secretary-General's report. As for the *Repertory*, following the encouragement in General Assembly resolution 58/248 of efforts to eliminate the backlog in its publication, the following summary could be given of the results achieved over the past 12 months. Some studies pertaining to volume I of Supplements Nos. 7, 8 and 9, and volumes IV and VI, of Supplements Nos. 8 and 9, had been finalized. Work was currently in progress on a limited number of studies for volumes I, II, IV and VI of Supplement No. 9, some of which constituted work commenced in 2003.

78. In previous years, steady progress in the preparation of the studies had resulted in a substantial reduction of the backlog and, in the case of some studies, an elimination of the backlog altogether. Although the preparation of individual studies had continued in 2004, the lack of funds had affected progress in practically all departments and the rhythm of preparation of studies had slowed down considerably. In the previous biennium, the backlog had largely centred on volumes I and III of Supplements Nos. 7 and 8. The current pace of work was such that there was a risk that the backlog would increase for volumes where it had been gradually reduced in the past, such as volumes II and V of Supplement No. 8. In 2005, the backlog might well start to grow again for volumes IV and VI, where it had been almost eliminated with the completion of most of the studies for Supplement No. 8 and even some for Supplement No. 9, which reflected the most recent period of activity involving the Charter of the United Nations. No work could be started on studies for Supplement No. 10 until 2006, since the supplement would cover the years 2000 to 2005.

79. Since 2003, all finalized and approved studies had been posted on the Internet, even before the completion of the work on individual volumes. All

were available in English and a large number also in French and Spanish. The Secretariat would continue to make further French and Spanish language versions available electronically as early as possible, as requested in General Assembly resolution 58/248, paragraphs 9 and 10. The work involved scanning and then placing on the Internet studies pertaining to older volumes published in French and Spanish but out of print and not otherwise available. French and Spanish versions of studies pertaining to recently completed volumes in English could be placed on the Internet only once they had been translated.

80. As for the cooperation with academic institutions urged by General Assembly resolution 58/248, several externs had assisted for a few months with research for a study on Article 2, paragraph 4, of the Charter, to appear in Supplement No. 7. The experiment had shown that such cooperation, while fruitful in some respects, was useful only at the stage of the collection of research material and data. The bulk of the work of writing the studies invariably fell to the Secretariat.

81. **Mr. Stagno Ugarte** (Costa Rica) said that the Committee should take note of the candid report given by the Director of the Codification Division and give due consideration to recommendations that might alleviate the Division's difficulties, such as those put forward by the Rio Group on the establishment of a trust fund.

The meeting rose at 1.05 p.m.